

S. AMANDA MARSHALL, OSB #95347

United States Attorney

District of Oregon

KEVIN DANIELSON, OSB #06586

Assistant United States Attorney

kevin.c.danielson@usdoj.gov

1000 SW Third Avenue, Suite 600

Portland, OR 97204-2902

Telephone: (503) 727-1025

FAX: (503) 727-1117

Attorneys for Defendants United States and Deborah Schmidt

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

JAMES W. EDGAR,

Civil No. 6:09-cv-06376-AA

Plaintiff,

**JOINT STIPULATION REQUESTING
THIS COURT TO VACATE ITS
PREVIOUS ORDER**

v.

**UNITED STATES, and DEBORAH
SCHMIDT,**

Defendants.

Defendants Deborah Schmidt and the United States, by S. Amanda Marshall, United States Attorney for the District of Oregon, through Assistant U.S. Attorney Kevin Danielson, and Plaintiff, James W. Edgar, through his counsel, James L. Buchal, jointly stipulate and request this Court to vacate its previous Order (CR 53) entered November 9, 2011.

1. Plaintiff James W. Edgar's amended complaint alleged that Deborah Schmidt, a district ranger for the U.S. Forest Service, violated his constitutional rights and sought a remedy for damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). CR 15 at ¶¶ 11-16. Plaintiff also alleged the United States committed conversion by destroying structures on his unpatented mining claim. CR 15 at ¶¶ 8-10.

2. After limited discovery, Defendant Schmidt moved for summary judgment and also raised the defense of qualified immunity. CR 23, 26. The United States moved for summary judgment on the conversion claim. CR 27, 28. This Court denied both motions for summary judgment and denied granting Defendant Schmidt qualified immunity. CR 53 at 2, 31.

3. Plaintiff cross-moved for summary judgment against the United States on the conversion claim but did not move for summary judgment against Defendant Schmidt on the *Bivens* claim. CR 31, 32. This Court, *sua sponte*, granted summary judgment in favor of Plaintiff on his *Bivens* claim against Defendant Schmidt for alleged violations of procedural due process. CR 53 at 35.

4. Defendant Schmidt moved to amend the judgment under Fed. R. Civ. P. 59(e) to allow her to address issues related to the granting of summary judgment by this Court. CR 56.

5. This Court granted Defendant Schmidt 30 days to present additional briefing. CR 60 at 2. This Court also encouraged the parties to take advantage of settlement proceedings offered by Magistrate Judge Thomas M. Coffin. *Id.* at 2-3.

6. The parties met with Magistrate Coffin on March 15, 2012, and subsequently agreed to settle the case. As part of the settlement agreement, the parties agreed to file a joint stipulation

requesting this Court to vacate its Order (CR 53) entered on November 9, 2011.

7. Accordingly, the parties now jointly stipulate and request that this Court vacate its Order (CR 53) entered on November 9, 2011.

Dated this 11th day of May 2012.

Respectfully submitted,

S. AMANDA MARSHALL
United States Attorney
District of Oregon

/s/James L. Buchal
JAMES L. BUCHAL
Attorney for Plaintiff

/s/ Kevin Danielson
KEVIN DANIELSON
Assistant United States Attorney
Attorney for United States and
Deborah Schmidt